

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

TRUE THE VOTE, ET AL.

PLAINTIFFS

V.

CIVIL ACTION NO. 3:14cv532-NFA

**THE HONORABLE DELBERT
HOSEMANN, in his official capacity
as Secretary of State for the State
of Mississippi, ET AL.**

DEFENDANTS

**SECRETARY OF STATE DELBERT HOSEMANN'S
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION, OR, ALTERNATIVELY, FOR JUDGMENT
ON THE PLEADINGS AS TO COUNT THREE OF
PLAINTIFFS' AMENDED COMPLAINT**

Defendant Secretary of State Delbert Hosemann, in his official capacity as Secretary of State for the State of Mississippi, submits this Motion to Dismiss for Lack of Subject Matter Jurisdiction, or, Alternatively, for Judgment on the Pleadings as to Count Three of Plaintiffs' Amended Complaint and states:

1. This lawsuit arises from events related to the June 24, 2014 run-off election between incumbent Thad Cochran and Chris McDaniel that decided the Mississippi Republican Party's nominee for United States Senator in the upcoming November general election. On July 30, plaintiffs filed an Amended Complaint asserting three counts against the defendants. Amended Complaint, Docket No. 58.

2. On August 29, the Court denied plaintiffs' motion for preliminary injunction seeking relief on their Amended Complaint's counts one and two asserting claims for access to documents based on the National Voter Registration Act ("NVRA"), Public Law No. 103-31, currently codified at 52 U.S.C. § 20501 *et seq.*, and dismissed those counts on summary judgment. Memorandum and Order, Docket No. 147.

3. Count three of plaintiffs' Amended Complaint purportedly asserts a vote dilution claim against the defendants in conjunction with the June 24 Republican Party run-off. The claim is based on the Equal Protection Clause and asserted by the individual plaintiffs pursuant to 42 U.S.C. § 1983. Amended Complaint at ¶¶ 87-95, Docket No. 58.

4. Count three should be dismissed for lack of subject matter jurisdiction due to plaintiffs' lack of standing to sue Secretary Hosemann under Article III of the Constitution.

5. Count three should also be dismissed for lack of subject matter jurisdiction because plaintiffs' claim against Secretary Hosemann is barred by his Eleventh Amendment immunity.

6. Alternatively, count three should be dismissed by way of judgment on the pleadings because plaintiffs have failed to state an equal protection claim against Secretary Hosemann pursuant to controlling Fifth Circuit precedent and persuasive authorities from other federal appellate

courts.

FOR THESE REASONS, and those set forth in his separately filed Supporting Brief, Secretary Hosemann respectfully requests that the Court enter an order granting his motion to dismiss for lack of subject matter jurisdiction, or, alternatively, for judgment on the pleadings, dismissing count three of plaintiffs' Amended Complaint against him, and rendering final judgment against plaintiffs.

THIS the 19th day of September, 2014.

Respectfully submitted,

DELBERT HOSEMAN, in his
official capacity as Secretary of State
for the State of Mississippi

By: JIM HOOD, ATTORNEY GENERAL

By: S/Justin L. Matheny
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*Counsel for Delbert Hosemann, in his
official capacity as Secretary of State
for the State of Mississippi*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed with the Clerk of Court using the Court's ECF system and thereby served on all counsel of record who have entered their appearance in this action to date.

THIS the 19th day of September, 2014.

S/Justin L. Matheny
Justin L. Matheny